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Federal Communications Commission
Office of Secretary

April 17, 1997

via Hand Delivery

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

**Re: Ex Parte Disclosure In the Matter of
Federal-State Joint Board on Universal Service,
CC Docket No. 96-45, FCC 96J-3.**

Dear Mr. Caton:

Pan Am Wireless, Inc., ("Pan Am Wireless") through its undersigned attorney, and pursuant to Sections 1.1202(b) and (c), and 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1202(b) and (c), and 1.1206, hereby requests that the following information be added to the record of the above-mentioned proceeding.

Officers and counsel of Pan Am Wireless, a radio paging carrier operating out of Puerto Rico, met with various Commission personnel to discuss the role of radio paging carriers in meeting the goals of universal service in Puerto Rico. Attached hereto is a summary of the points discussed at the meetings.

The officers and counsel of Pan Am Wireless met with the following persons:

David Siddall, Legal Advisor to Commissioner Susan Ness;
David Furth, Chief of the Commercial Wireless Division;
Jeffrey Steinburg, Legal Counsel, Commercial Wireless Division;
Tim Peterson, Legal Counsel, Common Carrier Bureau;
Greg Clopton, Legal Counsel, Common Carrier Bureau;
Suzanne Toller, Legal Advisor to Commissioner Rachelle Chong;
Daniel Gonzales, Legal Advisor to Commissioner Rachelle Chong; and
Rudolfo Baca, Legal Advisor to Commissioner James Quello.

Thank you for your attention to this matter. If you have any questions or would like

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additional information, please feel free to contact the undersigned.

Sincerely,


Frederick M. Joyce

enclosures

cc: Commission personnel listed above.

Luis Romero-Font, Pres., Pan Am Wireless, Inc.

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**I. The Joint Board's Universal Service Recommendations
are Unfair to Paging Companies.**

1. Paging Carriers should be deemed "exempt" from Universal Service Payment obligations. Paging Companies won't qualify for Universal Service support payments; but, they must pay into the fund. The Recommended Decision proposed to require CMRS providers to contribute to Federal and State universal service funds. However, CMRS providers are precluded from receiving any universal service support due to the limited definition of an eligible carrier. The definition of supportable services includes all of the following: "voice grade access to the public switch network, with the ability to place and receive calls; touch-tone or dual-tone multi-frequency signaling (DTMF) or its functional equivalent; single-party service; access to emergency services; access to operator service; access to interexchange services; and access to directory assistance". And, since paging carriers are not compensated for each call placed to a paging unit (unlike LECs), they will not even indirectly benefit from the universal service fund. Therefore, until such time as CMRS providers will be technically able to benefit from the universal service support mechanisms, the FCC should declare that CMRS providers are an exempt group of carriers.

2. If, nevertheless, the Joint Board compels paging companies to pay universal service fees, paging providers should not have to pay at the same rate as LECs; rather, CMRS contributions should be on a weighted basis. The FCC should implement a reduced payment schedule for messaging providers based on a policy of fairness and competitive neutrality, because: they are not currently eligible to receive universal service support funds, they do not have a large, stable customer base, barriers to entry in paging services have historically been very low, and, their profit margins are not nearly at the same level as LECs or other eligible carriers. Celpage will surely be adversely affected if the Commission requires one-way paging companies to contribute at the same rate as LECs.

3. States and Commonwealths Should be Preempted from Imposing Additional Universal Service fees on CMRS operators. The Recommended Decision also allows States to require CMRS providers to contribute to State universal service mechanisms. Because the CMRS industry is operating at market capacity, any fee imposed by the States on CMRS providers will disproportionately affect CMRS rates and entry. This is in violation of the Act, contrary to Congressional intent, and anti-competitive. Therefore, the FCC should apply the letter and spirit of Section 332(c)(3) of the Act, and preempt State universal service regulation for CMRS until such time as CMRS becomes a legitimate substitute for landline telephone exchange service.

4. Paging Companies' Contributions, if any, Should be Based on a Percentage of Net Income, not Gross Revenue.

5. The Joint Board Cannot Tax the Same Income Twice. The Joint Board

proposes that payments should be based on both interstate and intrastate revenues; however, there are no provisions for a credit for payments made to State universal service funds. Thus, carriers will be taxed twice on the same revenues. At the very minimum, the Joint Board should exclude intrastate revenues from its formula in those instances where carriers will be paying to a State fund based on the same revenues. In the alternative, as in the U.S. Tax Code, carriers should receive full credit for payments made to state funds.

6. The Model Adopted for Federal Universal Service Payments will Impact State Universal Programs.

The FCC's decision on how universal service payments will be calculated is particularly important since it will have a direct impact on how state universal service programs are implemented. For example, the Puerto Rico Telecommunications Board plans to establish a universal service payment mechanism that will be similar to the FCC's. This State fee would be in addition to the Federal fund requirement. Any inequities in the Federal universal service calculations will simply be compounded throughout the many states and commonwealths that will emulate the Federal model.

II. The FCC Should Preempt Most Provisions in the Puerto Rico Telecommunications Act.

The Puerto Rico Telecommunications Act of 1996 (the "PR Telecom Act") will reduce competition, violate federal law, favor the government-owned Puerto Rico Telephone Company at the expense of competitive carriers, and burden companies such as PanAm Wireless with unnecessary regulatory and tax burdens in a manner that not only violates federal law, but will potentially drive these communications businesses off of Puerto Rico. That is why PanAm Wireless and other carriers have petitioned the FCC to preempt this law.

The PR Telecom Act violates federal law in these broad respects: (1) it unlawfully adopts rate, certification and entry regulations against Commercial Mobile Radio Service providers ("CMRS", such as paging, cellular, and personal communication services) in violation of the federal Communications Act; (2) it unlawfully requires all telecommunications carriers to be regulated in a manner comparable to the monopoly local exchange carrier in Puerto Rico, the Puerto Rico Telephone Company; in direct violation of the recently adopted Telecommunications Act of 1996; while failing to address PRTC's historically anti-competitive conduct; (3) it unlawfully grants the new Board jurisdiction over interstate services; and, (4) it increases regulatory and tax burdens on communications companies in Puerto Rico in violation of the pro-competitive mandate of the Telecom Act of 1996, and the Commerce Clause of the U.S. Constitution.

Pan Am contends that FCC acquiescence at this critical moment is not required by the facts or by federal law. The comments filed in this proceeding, and the plain language of the PR Telcom Act, provide the FCC with ample grounds to find that many aspects of the PR Telcom

Act violate federal law, so that *any* regulations the Board might adopt would be *perforce* unlawful. It simply makes no sense to require carriers to await the adoption of unlawful or inappropriate regulations; that would place them in the untenable position of trying to obtain local injunctive relief from those regulations, while returning to the FCC for a preemption ruling. Instead, since the statutory flaws are so apparent, the FCC should immediately make appropriate preemption findings, thereby sparing all carriers and local regulatory and judicial authorities unnecessary legal expenses, and delays in implementing competitive services.